

HUMAN RIGHTS WATCH

1630 Connecticut Avenue, N.W.
Suite 500
Washington, DC 20009
Tel: 202-612-4321
Fax: 202-612-4333
Email: hrwdc@hrw.org

The Honorable Thomas Coburn
172 Russell Senate Office Building
Washington, DC 20510

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www.hrw.org

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July 18, 2008

Dear Senator Coburn,

Thank you for your follow-up questions in regards to the May 20, 2008 hearing *Global Internet Freedom: Corporate Responsibility and the Rule of Law*. Our responses to those questions are provided below.

1. Do you believe that American companies should do business in countries that censor the Internet?

We believe that the Internet is a critical medium to open societies and facilitate the free flow of information that is crucial for increased respect for human rights. For those and other reasons, we believe that, because both US companies and other companies can be important actors in closed societies, provided they aggressively work to curtail censorship, such companies should do business in as many countries as possible. Rather than leave, they should do everything they can to ensure that their products and services are not limited by censorship or other threats to human rights.

Where censorship or protection of cyberdissidents is an issue, we believe that companies should institute safeguards to minimize, if not eliminate, censorship. Those safeguards should include voluntary measures such as those discussed in the May 20, 2008 hearing. In order to further reduce censorship and to protect cyberdissidents, we also support regulatory measures such as those proposed in the Global Online Freedom Act, particularly in situations or in countries where companies are unwilling or unable to implement those protections themselves.

2. What is the experience of other non-internet companies doing business in China? In other words, certain industries like book publishers or movie producers must also comply with local censorship laws. Are they under as much pressure as these internet companies to defy authority and promote the free flow of information?

Our understanding is that book publishers have faced similar pressure to self-censor their products and regularly do so. For example, Harper Collins dropped the former British High Commissioner of Hong Kong, Chris Patten's, book in order to avoid offending the Chinese government. When the current head of Harper Collins was asked about censorship in China on the BBC in 2006, she said that she believed one had to respect different

"cultural sensitivities." In reference to Patten's book, she said, "you don't criticize Mickey if you work at Disneyland." Similarly, sections of former president Bill Clinton's memoirs were excised for distribution in China. We have no information to suggest that such companies are trying to combat such censorship.

3. **I have learned in preparing for this hearing that countries like Canada, France, Germany, and other surprising places require some kind of internet censorship. What is your position on those countries? Is any amount of censorship acceptable?**

We understand that, for numerous political, social, and historical reasons, there are restrictions to certain types of speech in European and other countries. We are sensitive to issues surrounding Nazi propaganda in Germany, "Hate Speech", and other issues where governments may try to restrict speech.

However, the right to freedom of expression is a fundamental one and, because it is essential for holding governments accountable to the public, it is necessary in order to protect the exercise of all other human rights in democratic societies. Freedom of expression is particularly necessary with respect to provocative or offensive speech. Once governmental censorship is permitted in such cases, the temptation is enormous for government officials to find speech that is critical of them to be unduly provocative or offensive as well. Taboos often mask matters of considerable public concern that are best addressed through honest and unfettered debate among those holding diverse points of view. Thus, the freedom to express even controversial points of view is important in order for societies to address key political, social, and cultural issues. Although international human rights law does impose certain limits on the right to freedom of expression, the important functions served by that right require interpreting those limitations narrowly. Freedom of expression may be limited to protect public safety and the rights of others, but such limitations must be strictly "necessary" in a democratic society. Banning provocative speech that does not imminently incite people to unlawful acts of discrimination, hostility or violence, rarely meets that test.

Laws that are intended to restrict speech can disproportionately restrict the protected right to freedom of expression. We are mindful that there are different perspectives on what is permissible and prohibited speech, but we base our position on a strong commitment to freedom of expression as a core principle of human rights and on our conviction that objectionable speech is best met with contrary speech, not censorship. We also believe that governments can best counter offensive speech by fulfilling their obligation to take positive measures to protect vulnerable groups, making clear that they reject all forms of discrimination, and ensuring that all groups have the right to present their views and counter those that they disagree with or find offensive.

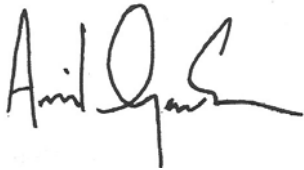
4. **As you know, in 2005, Yahoo! gave up a majority stake of its China service to a Chinese company, Alibaba, thus ceding control of its daily operations to that entity. What are your thoughts on this sale, especially with respect to how it did or did not affect Yahoo's human rights responsibilities in China? Do you see this sale as a trend for American internet companies doing business with repressive regimes? Do you view this as a good or bad thing?**

We do not have any information to suggest that Yahoo sold its stake to Alibaba primarily to avoid its human rights responsibilities or to avoid liability that might stem from ownership in that company. We were disappointed with Yahoo's subsequent assertions that they could not control the actions of their subsidiary with respect to cases like that of Shi Tao because of their minority ownership in the company. In that respect, it did have a negative impact on human rights and on Yahoo's reputation. This business relationship also makes it more difficult for companies who want to protect human rights to enforce their standards in repressive countries or with certain business partners.

We have no information suggesting that such sales are a trend, but we are troubled by the possibility that companies might sell controlling interest to avoid human rights responsibilities. We do feel that there are some ways to address this problem. A voluntary measure should include a provision that companies cannot cede controlling interests in business ventures for the purpose of avoiding their human rights obligations. In order to minimize the possibility of human rights abuses occurring even when a company does not have full ownership of a business venture, legislation could include provisions that ensure that human rights obligations also apply to certain subsidiaries or other business ventures.

Thank you again for the opportunity to speak on this matter and please let me know if there is any more information you might require.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arvind Ganesan', with a stylized flourish at the end.

Arvind Ganesan
Director
Business and Human Rights Program
Human Rights Watch